

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KENNETH BARKER and LOIS ANNE BARKER,

Plaintiffs,

v.

DEFAULT RESOLUTION NETWORK; FIDELITY
NATIONAL TITLE; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; ALBORG,
VEILUVA & EPSTEIN; TITLE COURT
SERVICES, INC.; GENPACT MORTGAGE
SERVICES; JAMES GIPS; JULIE WAGNER;
HOLLAND AND KNIGHT LLP; VITO
COSTANZO; RICHARD PETTY; TAYLOR
WOODS; MICHEAL VEILUVA; DARRELL
MARTIN; and DOES 1 through 50,
inclusive,

Defendants.

No. C 08-2898 CW

ORDER GRANTING
PLAINTIFFS'
MOTION TO FILE A
SECOND AMENDED
COMPLAINT

Plaintiffs Kenneth Barker and Lois Anne Barker have moved to
file a second amended complaint. Defendants Default Resolution
Network, Fidelity National Title Insurance Co., Mortgage Electronic
Registration Systems, Inc., Alborg, Veiluva & Epstein, LLP, and
Genpact Mortgage Services oppose the motion. The motion was taken
under submission on the papers. Having considered all of the
parties' papers, the Court grants the motion to file a second
amended complaint.

1 This dispute arises out of a notice of default and election to
2 sell under deed of trust for the property located at 2349 Royal
3 Oaks Drive in Alamo, California. The notice was recorded on May 1,
4 2008 and, on May 8, 2008, served on Plaintiffs, the joint owners of
5 the property. Plaintiffs allege that Defendants engaged in a
6 scheme to foreclose on their home illegally in violation of the
7 Racketeer Influenced and Corrupt Organizations Act (RICO).
8 Defendants moved to dismiss the original complaint because it did
9 not plead with particularity each element of the RICO cause of
10 action. On August 8, 2008, the Court granted Defendants' motion to
11 dismiss with leave to amend. Docket no. 30. On September 5, 2008
12 Genpact recorded a new Notice of Default and Notice of Trustee's
13 Sale curing a recording error and updating the reinstatement
14 amount.¹ Plaintiffs allege that they received these notices on
15 September 15, 2008. On September 8, 2008 Plaintiffs filed their
16 first amended complaint and, within two weeks, Defendants filed
17 motions to dismiss.

18 Instead of responding to the motion to dismiss, Plaintiffs
19 filed a second amended complaint on October 9, 2008. Plaintiffs
20 assert that the new Notice of Default and Notice of Trustee's Sale
21 identified new and different facts that warrant the filing of a
22 second amended complaint. The Court notes that the second amended
23 complaint differs only slightly from the first amended complaint.
24 It appears that the employees and individual attorneys working for
25 the existing named defendants were added as new named defendants.

26
27 ¹Neither Plaintiffs nor Defendants informed the Court as to
the nature of the recording error.

1 In the interest of judicial economy the Court GRANTS
2 Plaintiffs' motion to file a second amended complaint. The Court
3 will consider Defendants' motions to dismiss Plaintiffs' first
4 amended complaint as applicable to Plaintiffs' second amended
5 complaint. Within one week of the date of this order, Defendants
6 may file a brief, no more than ten pages, to address any new facts
7 or issues raised in Plaintiffs' second amended complaint.
8 Plaintiffs' opposition is due three weeks from the date of this
9 order, after Defendants' filing, and Defendants reply is due one
10 week thereafter. If Plaintiffs do not file a timely opposition,
11 the case will be dismissed for failure to prosecute.

12 IT IS SO ORDERED.

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14 Dated: 11/12/08



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CLAUDIA WILKEN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

KENNETH BARKER et al,

Case Number: CV08-02898 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

DEFAULT RESOLUTION NETWORK et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 12, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Dated: November 12, 2008

Richard W. Wicking, Clerk
By: Sheilah Cahill, Deputy Clerk